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MAY 24 2004

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MAILED
MAY 24 2004
OFFICE OF THE DIRECTOR
TC 3800

In re Application of :
John David Melius : DECISION ON PETITION
Application No. 10/060,142 : TO WITHDRAW THE
Filed: February 1, 2002 : HOLDING OF ABANDONMENT
For: ERGONOMIC SWIM FIN APPARATUS :

This is in reply to applicant's renewed petition filed in the United States Patent and Trademark Office on February 26, 2004.

The petition is **GRANTED**.

A review of the file record reveals that an Office action was mailed to applicant at the address of record on February 14, 2003. Since a response to the February 14, 2003 Office action has not been received, the application was held abandoned and a Notice of Abandonment was mailed September 23, 2003.

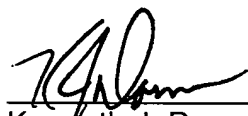
There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Applicant's (in this case the inventor, Mr. John Melius) statements of non-receipt should include a statement by him, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (e.g., a copy of the outside of the file maintained by applicant), are required if available. Also, a showing of any docket records or other method which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, failed to find a copy of the Office communication in question. Finally, applicant must state that he was in fact at the correspondence address of record at the time the Office action would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

The renewed petition includes a statement by Mr. Melius attesting to the fact that he and his wife were in residence at the correspondence address of record where the Office action should have been received at the time the action was mailed. Mr. Melius and his wife provide statements describing how incoming mail is normally received and processed. Mr. Melius further provides photocopies of the filing system in which copies of correspondence received from the USPTO are normally kept and provides an explanation as to how papers are received and placed in the files. Mr. Melius further states that all files were searched, including non-patent related papers, and that the search did not produce the missing Office action. Applicant further provides evidence regarding disruption of mail service around the time the Office action would have been received. Applicant's statements and exhibits regarding the non-receipt of the Office action mailed February 14, 2003 are acceptable.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status, and to redate and remail the Office Action of February 14, 2003 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



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KJD/mjz: 5/20/04